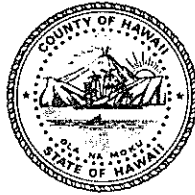


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

#### **CERTIFIED MAIL**

**7099 3220 0000 4869 6803**

May 3, 2000

Mr. Ronald A. Rigg, Principal Broker  
RSM, INC.  
P. O. Box 747  
Hilo, HI 96721-0747

Dear Mr. Rigg:

**VARIANCE PERMIT NO. 1113 (VAR 00-007)**  
**Applicant: RONALD A. RIGG**  
**Owner: ESTHER FIGUEROA**  
**Request: Variance From Minimum Yards,**  
**Pursuant to Chapter 25, Zoning**  
**Tax Map Key: 1-9-018:070, Lot 70**

After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request. Variance Permit No. 1113 allows portions of an existing dwelling "AS BUILT" to remain on the subject property with a minimum side yard of 14.09 feet and 12.39 feet open space from the affected side yard, in lieu of the minimum 15 feet side yard and 10 feet open space requirements, respectively, as required by the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, Section 25-5-77, Other regulations, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces, respectively.

#### **FINDINGS AND RECOMMENDATION**

The Planning Director has concluded that the variance request from the minimum side yard and open space requirements should be approved based on the following findings:

004493

MAY 04 2000

Mr. Ronald A. Rigg, Principal Broker  
RSM, INC.  
Page 2  
May 3, 2000

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 21,778 square feet is Lot 70, Volcano Cymbidium Acres, Oloa, Puna, Hawaii. The property's address is 19-4218 Ne Koa Nui Boulevard (Road "B").
2. It appears that the existing dwelling and water tank building improvements were constructed under previous building permit(s) issued in by the Department of Public Works (DPW), Building Division in Hilo.
3. It appears the original site plans attached to the original building drawing plans for the dwelling and other related site improvements were reviewed and approved by the Planning Department and other affected government agencies. The required building inspections were conducted by DPW building inspectors and by representatives from other affected government agencies of all building improvements on the property.
4. The map showing existing conditions, drawn to scale and dated November 9, 1999 by The Independent Hawaii Surveyors, identifies the existing dwelling and building encroachments located on the subject property.
5. The applicant's written description dated "4 January 2000" states in part:

"This letter is in regard to an "Application For Variance" on Lot # 70, Kekoanui Blvd..(sic) The home is located at Volcano Village, TMK # 3<sup>rd</sup>-1-9-18-70. Upon receipt of a recent survey, it was discovered that the corner of the house projects another 24 inches beyond the corner. Given that the supporting post for that corner exists (sic) right at the corner it would be a structural challenge to cut the corner off. It would be a negative impact on the small one bedroom of (914 square feet, living area) cottage to reduce the size. A permit was obtained and finalized by the original owner. The inspector did not question the setback. The applicant is the third owner. The corner that projects over into the set back is approximately 1/2 square foot. Please note that this does not go over the boundary line, it is approximately 14.9 feet from the boundary. We are requesting a variance from the county to allow this to stand based on its low impact to the adjacent owners and its present use as a cottage."

"Please note that the adjoiner's shed has no permit and the roof has been removed."

Mr. Ronald A. Rigg, Principal Broker  
RSM, INC.  
Page 3  
May 3, 2000

6. The Department of Finance-Real Property Tax Office memorandum dated February 9, 2000 states in part:

“There are no rollback tax consequences.”

“Real Property taxes are paid through June 30, 2000.”

7. The State Department of Health (DOH) memorandum dated February 10, 2000, in the subject variance file states:

“The Health Department found no environmental health concerns with regulatory implications in the submittals.”

8. No comments were received by The Department of Public Works (DPW).

9. Proof of serving first and second mailing of notice to the owners and lessees of record of all lots within five hundred feet was submitted by the applicant's representative. No oral or written objections to the subject variance were received by the Planning Department.

The applicant submitted a site plan, which identifies the location of an existing dwelling and related building improvements. The site plan submitted identifies the distances between the dwelling and the affected side boundary line. Portions of the existing dwelling and roof eave were constructed within one of the property's two side yards.

Therefore, considering the foregoing facts, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the owners/applicant of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the subject property.

#### ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the owners/applicant. Alternatives available to the applicant include the following: Removing the existing building encroachments within the correct building envelope prescribed by the Zoning Code, and other similar design alternatives, etc. The removal of the building encroachments or the re-sitting, redesign, and remodeling, etc. of the existing dwelling would be economically unreasonable and may disrupt other existing site improvements.

Mr. Ronald A. Rigg, Principal Broker  
RSM, INC.  
Page 4  
May 3, 2000

The applicant is honestly trying to resolve existing building encroachment problems. No evidence has been found to show indifference or premeditation by the previous or current owner or applicant to deliberately or intentionally allow the building encroachment problems to occur.

The Planning Department acknowledges there may be other design or building alternatives available to the owner/applicant recited above. However, these design and building alternatives are deemed to be unreasonable at this time and would place excessive demands on the present owners or applicant when a more reasonable alternative is available by the granting of the subject variance request.

#### INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air and light circulation is available between permitted structure(s) and property lines. The affected portions of the existing dwelling and other site improvements were constructed by a previous owner under building permit(s) issued by Hawaii County. Building inspections of the premises, during building construction and throughout the life of the building permit(s) did not disclose any building setback irregularities. The current owner and applicant did not discover the encroachments until the sale of the subject property.

The circumstances which permitted the existing building improvements to be built on the property are unique. The existing building encroachments have been built within a side yard. The existing building encroachments are not physically and visually obtrusive from the existing right-of-way. It appears the building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding land patterns. It appears the existing building encroachments built and established on the property has not visually, physically or adversely affected the rights of the property owners of the adjacent or surrounding properties. Therefore, it is felt the existing building encroachments will not detract from the character of the immediate neighborhood or the subdivision. It appears the existing building encroachments on the property and within the affected side yard were created and induced by an accumulation of mapping and building discrepancies or interpretation of the minimum yards during building construction by the previous owner. Inspection of the property during the life of the building permit(s) by government agencies did not discover any building encroachment or disclose any irregular building setback problems.

The subject variance application was acknowledged by certified letter dated February 2, 2000. Additional time to review the subject variance application by the participating agencies.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code

Mr. Ronald A. Rigg, Principal Broker  
RSM, INC.  
Page 5  
May 3, 2000

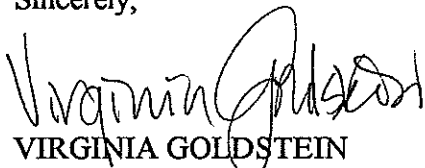
and the County General Plan. Furthermore, the variance request will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties.

This variance request is approved subject to the following conditions:

1. The applicant/owners, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The approval of this variance is only from the Zoning Code. The applicant/owner, successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction setbacks and building occupancy.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

WRY/VKG:gp  
p:\WP60\WRY\FORMLETT\VARAPPTMK19018070.RIGG.1

c: Real Property Tax Office